

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PEYTON H. HEMINGWAY,

Case No. 2:16-cv-01253-GMN-PAL

Plaintiff,

**REPORT OF FINDINGS AND
RECOMMENDATION**

v.

GABRIEL L. GRASSO, P.C.,

Defendant.

This matter is before the court on Plaintiff Peyton H. Hemingway's failure to comply with the court's Order (ECF No. 4). This proceeding is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4 of the Local Rules of Practice.

Plaintiff is a prisoner proceeding in this action *pro se* and he filed an Application to Proceed *In Forma Pauperis* (ECF No. 3) on July 18, 2016. The Court issued an Order granting Plaintiff's request to proceed *in forma pauperis* and instructed Plaintiff that his Complaint would be screened pursuant to 28 U.S.C. § 1915A once he paid an initial partial filing fee of \$10.67. See Order (ECF No. 4). The court allowed Plaintiff 30 days to have the designated fee sent to the Clerk of the Court, on or before August 29, 2016. *Id.* Plaintiff has not sent the designated fee to the Clerk's Office, requested an extension of time, or taken any other action to prosecute this case. Plaintiff was warned that failure to do so may result in a recommendation to the district judge that this case be dismissed. Plaintiff was also cautioned that, even if this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

Accordingly,


IT IS RECOMMENDED that this case be **DISMISSED**.

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1 **IT IS FURTHER RECOMMENDED** that the Clerk of the Court be instructed to close
2 this case and enter judgment accordingly.

3 Dated this 14th day of September, 2016.

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6 PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE

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8 **NOTICE**

9 This Report of Findings and Recommendation is submitted to the assigned district judge
10 pursuant to 28 U.S.C. § 636(b)(1) and is not immediately appealable to the Court of Appeals for
11 the Ninth Circuit. Any notice of appeal to the Ninth Circuit should not be filed until entry of the
12 district court's judgment. *See* Fed. R. App. Pro. 4(a)(1). Pursuant to LR IB 3-2(a) of the Local
13 Rules of Practice, any party wishing to object to a magistrate judge's findings and
14 recommendations of shall file and serve *specific written objections*, together with points and
15 authorities in support of those objections, within 14 days of the date of service. *See also* 28
16 U.S.C. § 636(b)(1); Fed. R. Civ. Pro. 6, 72. The document should be captioned "Objections to
17 Magistrate Judge's Report of Findings and Recommendation," and it is subject to the page
18 limitations found in LR 7-3(b). The parties are advised that failure to file objections within the
19 specified time may result in the district court's acceptance of this Report of Findings and
20 Recommendation without further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
21 (9th Cir. 2003). In addition, failure to file timely objections to any factual determinations by a
22 magistrate judge may be considered a waiver of a party's right to appellate review of the findings
23 of fact in an order or judgment entered pursuant to the recommendation. *See Martinez v. Ylst*,
24 951 F.2d 1153, 1156 (9th Cir. 1991); Fed. R. Civ. Pro. 72.